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Spring 2014

Art, Law, and Power

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Skidmore College

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Art, Law, and Power

Colleen Hochberger

Spring 2014

Honor Thesis

Art, Law, and Power

AH 371 (3 credits)

Spring 2014

Instructor: Colleen Hochberger

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Course Time: Tu/Th 12:40 – 2

REQUIRED TEXTS:

Leonard DuBoff & Christy King, *Art Law in a Nutshell* (3rd ed.), West Group, 2000

Ralph Lerner & Judith Bresler, *Art Law: The Guide for Collectors, Investors, Dealers, and Artists* (4th ed.), Practising Law Institute, 2012

Robert Wittman & John Shiffman, *Priceless*, Crown Publishers, 2010.

Don Thompson, *The \$12 Million Stuffed Shark*, Palgrave Macmillan, 2008

All other required texts are available electronically on Blackboard under “Course Readings.” To access the course site, go to: <http://learn.skidmore.edu>

COURSE DESCRIPTION

“Every work of art is an uncommitted crime.” -Theodore Wiesengrund Adorno, *Minima Moralia*

While art and law are seemingly unrelated, the above quote represents how the two fields are in fact directly connected. The quote hints at an artwork’s ability to disrupt the status quo, reflecting how art is a threatening and dangerous medium that can challenge authority. Undoubtedly, art has power. Because all lawsuits are inherently power struggles, analyzing art through a legal lens reveals power dynamics within both the art community and society at large. The interdisciplinary field of study identified as “art law” deals with the many legal concerns pervading the art world. Examining art law illuminates both persistent and changing power structures, along with shifts in cultural attitudes overtime. On a global scale, art law cases illustrate how art possesses tremendous universal importance and is treasured by all of humanity. Although the course is organized thematically, divided into different weekly and bi-weekly units, major themes and concepts, like identity politics, increased globalization, technological advancements, and capitalism, are largely interrelated and recurring. The course units are: The Art Market, International Law, Art Crime, Freedom of Expression, Copyright Law, and Conservation.

Course Objectives:

1. To learn about the interdisciplinary field of art law via legal documents, case studies, and academic discourse.
2. To assess the verdicts of significant legal cases and understand the consequences and larger socio-political implications of these outcomes.
3. To critically observe the identity politics at play in certain legal cases, and interpret how the law both shapes and reflects dominant ideologies and values.
4. To examine how contemporary art law conflicts reflect an increasingly globalized, technological, and capitalist world.
5. To analyze philosophical and legal concepts of ownership (whether it’s individual, cultural, or intellectual) and to recognize how ownership represents power and control.
6. To conduct an interdisciplinary analyses of pressing legal debates in the contemporary art world, as well as gain a deeper understanding of the contemporary art world.
7. To practice and develop skills in scholarly writing, research, presentation, and debate.

8. To track the law over time and contextualize certain legal cases, in order to perceive how the law is not static, but is in fact malleable and constantly changing.

COURSE REQUIREMENTS

Class Attendance & Participation	15%
Homework Discussion Questions	10%
Antiquities Debate & Paper	20%
Art Law Blog Presentation	10%
Research Paper	20%
Final Project	25%

Class Attendance and Participation: 15%

The format for the class will mostly be discussion based, using the Socratic method since this is the model of most law school courses. However, lectures, class and group activities, and video clips will also be employed often. Because most of the course texts are dissected through class discussion, class attendance is mandatory and imperative. In order to illustrate that you have read the assigned material, active participation each class is necessary. You are expected to come to each class having done the readings and prepared to discuss them. Each reading should be completed by the date it appears under on the syllabus. If you miss class, you are responsible for getting the discussion and lecture notes from a peer. Also, all course materials are available on the course website. You are required to print out each online reading, so that you have a hard copy to refer to in class. All participation in class should demonstrate thoughtful assessment and understanding of course material.

Homework Discussion Questions: 10%

Each week a different student will be responsible for coming up with two or three insightful and critical discussion questions in response to the assigned reading for their designated day. The student will pose their questions to the class, posting on Blackboard in the selected discussion thread section, and the rest of the class is expected to respond to each question in the thread before class time. All discussion questions will be for that Thursday's class. Therefore, the appointed student must post their questions online the Tuesday before, in order to give the rest of the class adequate time to answer these questions before class. Questions should address course themes and make connections to different course units.

Antiquities Debate and Paper: 20%

During the International Law unit, students will read two opposing essays, one written by James Cuno and the other by Roger Atwood. The readings highlight both sides of the ongoing debate surrounding the obtainment and cultural status of antiquities. While Cuno takes a universalistic stance on antiquities, claiming that they are the cultural property of humanity, Atwood occupies a nationalist viewpoint, arguing that the acquisition of looted antiquities by major museums robs a region of its culture. After reading and analyzing the two works, students will come to class thoroughly understanding both sides of the dispute. Each student should arrive to class with typed notes, prepared to defend both sides of the debate. The class will then engage in a formal debate, where students will be randomly assigned to argue for either a universalistic or nationalistic outlook on antiquities. This debate is worth 5% of the overall assignment grade.

Subsequent to the debate, students will complete a 5 page paper advocating for the side of their choice. Students should use the in-class debate to guide their paper, addressing issues and overall questions the discussion raised. The paper should make clear the benefits of the chosen side, as well as exemplify the limitations of the opposing viewpoint. Students should conduct research, analyzing and referring to other scholars participating in the dialogue. In conclusion, students should illuminate the overall importance of the debate (why does it matter?) and suggest potential resolutions to the problem.

Art Law Blog Presentation: 10%

The Internet contains countless art law blogs, where law firms, individual lawyers, or law schools detail certain legal disputes or happenings in the art world. Some popular blogs include Center for Art Law, The Art Law Blog, and Georgetown Law's blog. Throughout the course, each student will choose a recent post from an art law blog and enlighten the class on the significance of the case. Students should relate the blog post to overarching course themes or a recent class discussion. Students should also research the blog itself, identifying who runs it and how long it has been operating. Critical thinking is encouraged, and students should consider whether the authors' opinions affect how they describe and report on the case. Presentations should be kept short, no longer than five minutes, and will ensue at the start of each class. As a result, students will be aware of current art law issues throughout the course, maybe even observing how a specific lawsuit plays out if multiple students present on it at different times throughout the semester.

Research Paper: 20%

All students are required to write a 6 to 8 page research paper on a legal case, or two related cases, of their choice. The lawsuit should obviously involve art and should be a case we are not discussing at length in the class. The lawsuit should exemplify power dynamics either in the art world or larger society. Other course themes, like technological, international, or political issues, should also be examined. For example, a student could research the Canadian government's outlawing of the Native Canadian potlatch ceremony and its associated art (Indian Act of 1884) in relation to identity politics. Students should conduct research in order to detail the specifics of the case, locate discourses surrounding it, position the lawsuit historically, contextualize the legal dispute and consider whether the verdict or issue at hand reflects larger cultural concerns or anxieties of the time. Did the case set an important precedent, or cause further ambiguity surrounding a law? The required course texts, *Art Law in a Nutshell* and *Art Law: The Guide for Collectors, Investors, Dealers, and Artists*, outline numerous significant lawsuits and might be a useful place to start looking for case examples. The research databases on the Skidmore Library webpage are also a good place to start researching.

Final Project: 25%

The final project for this course is intentionally flexible and open-ended. Because there are multiple forms of intelligence and/or expertise, where different people possess diverse academic passions or excel in distinctive subjects, students will have the opportunity to choose a project that best exemplifies the art law knowledge they have gained throughout the course. For example, a studio art major might choose to create an art piece that appropriates another artist's work. Using the Fair Use test discussed during the Copyright unit, the student might justify through a paper or presentation, why their appropriation does not constitute copyright infringement. Another student might give an extensive final presentation discussing a subject that constitutes "art law" but was not addressed in the course, like artist's estates and royalties. While the final project is very accommodating it is not limitless. Thus, students will propose ideas for the project early in the semester in order to assure that the endeavor sufficiently represents comprehension of course material. All projects will be presented during the designated class exam period during finals week.

Important Information About Papers:

Papers and assignments must be submitted on time, and all late work will be marked down 1/3 a grade for every day it is late. Several resources to help with writing are the Writing Center located in the Lucy Scribner Library, Room 440, the Skidmore College online guide to writing [guide to writing](#), or [The Chicago Manual of Style Online](#). All papers must meet the minimum length requirement to receive full credit. Any paper that plagiarizes will receive no credit and serious consequences will follow due to violations of the Skidmore Honor Code.

Weekly Assignments

Introduction to Art Law

Tuesday, January 21

- Review/ discuss the syllabus and review the course assignments

Thursday, January 23

- Read:
 - Weil E., Stephen. "Some Thoughts on 'Art Law.'" In *Beauty and the Beasts: on Museums, Art, the Law, and the Market*, 199-210.
 - DuBoff and King. "Art: The Customs Definition." In *Art Law in a Nutshell*, 1-7.
 - Lerner and Bresler. "Introduction." In *Art Law*, 1-10.

The Art Market

Tuesday, January 28

- Read:
 - Thompson, *The \$12 Million Stuffed Shark*, pg. 1-150.

Thursday, January 30

- Read:
 - Thompson, *The \$12 Million Stuffed Shark*, 150-250 (finish book).

Tuesday, February 4

- Read:
 - Vyas, Stephanie G. "Is There an Expert in the House? *Thomson v. Christie's*: The Case of the Houghton Urns." *International Journal of Cultural Property* 12 (2005): 425-441.

Thursday, February 6

- Read:
 - Lind, Robert C., Robert M. Jarvis, and Marilyn E. Phelan. "Introduction to Museum Law." In *Art and Museum Law*. Durham, North Carolina: Carolina Academic Press, 2002.

International Law

Tuesday, February 11

- Read:
 - DuBoff, Leonard D., and Christy D. King. "Art: International Movement." In *Art Law in a Nutshell* 3rd Edition, 1-7.

Thursday, February 13

- Read:
 - Mashberg, Tom. "Hopis Try to Stop Paris Sale of Artifacts." *New York Times*, April 3, 2013.
 - Mashberg, Tom. "Secret Bids Guide Hopi Indians' Spirits Home." *New York Times*, December 16, 2013.

Tuesday, February 18

- **Read:**
 - Cuno, James. "Introduction." In *Whose Culture? The Promise of Museums and the Debate Over Antiquities*. Princeton: Princeton University Press, 2009.

Thursday, February 20- Class Debate

- Prepare for the debate (see details in the syllabus)
- **Read:**
 - Atwood, Roger. "Guardians of Antiquity?" *Archaeology* 61 (2008): 18-70.

Art Crime

Tuesday, February 25

- **Due: Antiquities paper**
- **Watch:**
 - Allen, Joan. *The Rape of Europa*. DVD. Directed by Richard Berg, Bonni Cohen, and Nicole Newnham. 117 minutes. Santa Monica: Menemsha, 2007.

Thursday, February 27

- **Read:**
 - Wittman and Shiffman, *Priceless*, pg. 1-93.

Tuesday, March 4

- **Read:**
 - Wittman and Shiffman. *Priceless*, pg. 93-223.

Thursday, March 6

- **Read:**
 - Wittman and Shiffman. *Priceless*, pg. 223-319 (finish book).

March 8-16: Spring Break!

Freedom of Expression

Tuesday, March 18

- **Read:**
 - DuBoff, Leonard D., and Christy D. King. "Freedom of Expression." In *Art Law in a Nutshell* 3rd Edition, 222-243.
- **Due: Final Project Proposal Blurb** (hard copy)

Thursday, March 20

- **Read:**
 - DuBoff, Leonard D., and Christy D. King. "Freedom of Expression." In *Art Law in a Nutshell* 3rd Edition, 222-243.

Tuesday, March 25

- **Read:**

- Darts, David. “The Art of Culture War: (Un)Popular Culture, Freedom of Expression, and Art Education.” *Studies in Art Education* 49 (2008): 103-121.

Thursday, March 27

- **Read:**
 - Storr, Robert. “Art, Censorship, and the First Amendment: This Is Not a Test.” *Art Journal* 50 (1991): 12-28.

Tuesday, April 1

- **Read:**
 - Lerner, Ralph E., and Judith Bresler. “Public Art” In *Art Law: The Guide for Collectors, Investors, Dealers, and Artists* 4th Edition, 858-862.

Thursday, April 3

- **Due: Research Paper**
- **Wrap-up discussion and lecture on First Amendment Rights**

Copyright Law

Tuesday, April 8

- **Read:**
 - DuBoff, Leonard D., and Christy D. King. “Copyright.” In *Art Law in a Nutshell* 3rd Edition, 158-185.

Thursday, April 10

- **Read:**
 - Zuber, Tom, and Jeff Zuber. “*Carion v. Prince*: Court Finds Appropriated but Altered Photos Protected under Fair Use.” LawUpdates.com, June 9, 2013.
 - Kennedy, Randy. “Apropos Appropriation.” *New York Times*, December 28, 2011, accessed March 25, 2014.
 - Halperin, Julia. “Prince Versus Cariou Copyright Case Settled.” *The Art Newspaper*, March 18, 2014, accessed March 25, 2014

Tuesday, April 15

- **Read:**
 - Robertson, Kirsty. “Embroidery Pirates and Fashion Victims: Textiles, Craft and Copyright.” *Textile* 8 (2010): 86-111.

Conservation

Thursday, April 17

- **Read:**
 - Garfinkle, Ann M., Janet Fries, Daniel Lopez, and Laura Possessky. “Art Conservation and the Legal Obligation to Preserve Artistic Intent.” *Journal of the American Institute for Conservation* 36 (1997): 165-179.

Tuesday, April 22

- **Read:**
 - Hornbeck, Stephanie E. “A Conservation Conundrum: Ephemeral Art at the National Museum of African Art.” *African Arts* (2009): 52- 61.

Thursday, April 24

- **Read:**
 - Minder, Raphael. “Despite Good Intentions, A Fresco In Spain Is Ruined.” *New York Times*, August 23, 2012.
 - Neild, Barry. “Ecce Homo ‘Restorer’ Wants a Slice of the Royalties.” *The Guardian*, September 20, 2012.
 - Buckley, Cara. “Night Falls, and 5Pointz, a Graffiti Mecca, Is Whited Out in Queens.” *New York Times*, November 19, 2013.

Tuesday, April 29 – Last Day: Peer Consultations and Evaluations

Study Days May 1-4

Final Exam Date:

- **Date:** Monday May 5, 2014
- **Where:** Filene, 118
- **Time:** 9:00-12:00 AM

Why Art Law?

Most plainly, adding a course on art law to the art history department would benefit students interested in law. Art history majors and minors curious about law school and a legal career can gain an overview of art law's major elements and complexities. However, the course would also cater to a variety of other student interests, making the class valuable to the Skidmore community across departments. For example, studio art majors pursuing a career as an artist should be well educated in the many legal risks artists face. An art law class would inform such students on the critical precautions all artists should take when engaging in business surrounding their art. Similarly, students with a focus in business might find the course appealing, as many units and themes return to the notion that art is a commodity. Examining the business of art and the many legal disputes that arise over an artwork's value might cultivate a student's interest in participating in the art market post-grad. Thus, art law is a practical interdisciplinary focus as it enlightens students on the many diverse professional fields surrounding art, and in doing so, positions art as a tangible entity existent and integrated in the real world, not as works of geniuses, superior to social systems and institutions.

Because art law is such a broad and comprehensive field, narrowing down course units and material was extremely difficult. At times, the process of separating these topics into rigid units seemed artificial, since so many of the themes, laws, and concepts are inherently interrelated. Consequently, the syllabus explicitly addresses the interconnectedness of most of the material, so students are aware going into the course that units are not distinct, but instead illuminate important recurring themes. The units on the final syllabus were chosen because they best represent a wide-ranging scope of issues in art law, and demonstrate how these legal concerns reflect power struggles. The material included encompasses a diverse array of subjects, art media, and cultures, in order to view art law in its global entirety.

Introduction to Art Law

(Week 1)

In order for students to appreciate and understand specific areas of art law, they must first gain a broad overview of everything the interdisciplinary field has to offer. The three assigned introductory readings, when paired together, provide a thorough summary of the many legal issues surrounding art. Each reading enhances student learning by referring to different case examples and approaching art law from a distinct perspective. After studying this introductory unit, student will have a general understanding of art law's main objectives and concerns. This preliminary knowledge will adequately prepare students for the more specific themes and questions that later units concentrate on.

Weil E., Stephen. "Some Thoughts on 'Art Law.'" In *Beauty and the Beasts: On Museums, Art, the Law, and the Market*, 199-210. Washington, D.C.: Smithsonian Institution Press, 1983.

DuBoff, Leonard D., and Christy D. King. "Art: The Customs Definition." In *Art Law in a Nutshell* 3rd Edition, 1-7. St. Paul, Minnesota: West Group, 2000.

Lerner, Ralph E., and Judith Bresler. "Introduction." In *Art Law: The Guide for Collectors, Investors, Dealers, and Artists* 4th Edition, 1-10. New York: Practising Law Institute, 2012.

SUMMARY

The chapter in Weil's book titled "Some Thoughts on 'Art Law'" presents a general account of Art Law as a practice. The author is slightly humorous in his writing style, describing how his students are enchanted and excited to practice Art Law, often asking him for advice, eager to break into the field. Yet, it always baffles him why this particular subject is so popular, as Art Law is not a specific discipline but an interdisciplinary assembly of legal issues that is performed irregularly. Thus, he advises his pupils to gain a broad experience their first years at the bar, since a variety of knowledge will be most helpful to museums and artists rather than being so focused in such an "odd and obscurely defined specialty" (200). After a brief description of Art Law, Weil discusses the subject's history, tracing it back to the 1950s in the U.S.A. However, it wasn't until the late '60s and '70s that scholarly and legislative legal concern with the art world began to increase. While Weil outlines certain legal cases that have improved the dealings between artists, dealers, collectors, museums, and trustees, he ultimately concludes that there is still much progress that needs to be made regarding the international movement, protection, and funding of art.

Chapter one of DuBoff and King's *Art Law in a Nutshell* discusses the definition of art based on customs. The customs definition of art is important to many people, since art can enter the U.S.A duty-free, and is therefore exempt from taxes. However, the reading demonstrates through several cases how the definition of art is fluid as it has changed numerous times throughout history. For example, previous to the case *Brancusi v. the U.S.* (1928), only paintings

were considered art. Subsequent to this case more unconventional forms were recognized as art, yet the law continued to struggle with the distinction between art and non-art. In 1958 customs modified their law to agree with The Harmonized Schedule, an international system that designated art as any work done by a professional artist. Another famous case that influenced the customs definition of art was *G. Hellman Brewing Co. vs. U.S.* (1990) where the court ruled that any item imported for commercial or industrial use couldn't be considered art.

Lerner and Bresler's introduction to Art Law is extremely detailed, explaining in depth each area where law and art typically intersect. The reading begins by describing the anomaly that is the art market and how it was even unaffected by the most recent financial crisis. Like Stephen Weil, the authors connect the abnormal and lucrative art market to rising legal concerns surrounding art. The reading separates Art Law into seven broad categories: Dealers, Artwork Transactions, Artist's Rights, Collectors, Tax Planning/ Estate Planning, and Museums and Multimedia. While these topics are further unpacked as chapters in the rest of the book, the introduction concisely explains what each subject mainly entails.

JUSTIFICATION

I would assign the Weil reading first on the syllabus, as it provides students with a general definition of Art Law, yet simultaneously illustrates overarching problems within the field, making it a great initial introduction to the course. Also, Weil's writing is enjoyable and easy to comprehend as he demonstrates some of what Art Law encompasses in a straightforward and entertaining manner. His symptomatic analysis of what sparked the extreme growth of interest in Art Law during the '80s is especially relevant to the course. For example, he connects the rise in Art Law to the contemporary upsurge of value in the art market, along with hit museum exhibitions and increased media attention on art matters. Through reading about the history of Art Law and its relationship to the art world students will gain a preface to ideas we

will be further exploring in the course, like the reciprocal relationship between law and the art market. The author also gives a basic introduction to key players in the art world, thus providing students with foundational knowledge concerning who would be involved in an art lawsuit. For example, he outlines archetypes like the “True Collector, the Philistine Investor, Dedicated Artist, Inauthentic Hack, Dealer, Auctioneer, Curator, Scholar, Critic, Trustee” etc., explaining how they may all claim certain identities in order to gain legal advantages in different situations (202-203). The author’s dramatic representations summarize the fundamental relations between people involved in various art legal cases. Weil realizes that every case is unique and requires special attention due to the importance art has historically and culturally. Thus, this reading also sets the stage for the course theme regarding the special social and sentimental value of art. Through beginning with this basic and comprehensible introduction to Art Law, students will then be able to better understand the more detailed introductory texts that follow.

Although the DuBoff and King reading is short and specific to customs related cases concerning art, I believe that the source is beneficial to add to the syllabus as it introduces the complexity of art within certain contexts. While the reading focuses on individual cases, these legal rulings are microcosms for larger concerns within the art world. For example, through adopting The Harmonized Schedule scheme, U.S.A customs is discriminating between high and low art, since they are judging any craft as non-art since a “professional artist” did not make the work. Other cases illustrate how customs law is not defining art based on aesthetics but merely on political and economic concerns. Thus, the reading establishes the law’s role in defining art and how that definition changes over time and within certain contexts, a notion that is important to the course.

The Lerner and Bresler introduction covers more areas of Art Law than the course does; yet the source is important in conveying how interdisciplinary law and art truly is. The

introduction exemplifies numerous legal concerns one would not think of when considering art, and discusses laws that have been recently overturned or conflict with other rulings. Although the legal jargon is slightly intimidating in this reading, I think it is important for students to understand the complex relationship between law and art. When discussing this dense reading in the classroom context, I would simplify it by drawing out the major themes that will apply to other readings on the syllabus. For example, how increased globalization and technology has transformed legal issues in the art world, or the philosophical notion of both cultural and individual ownership. Supplementing this source with the previous introductory reading will provide students with a rich overview of what Art Law entails before delving into specific areas.

POSSIBLE CLASS DISCUSSIONS

Students should leave class discussion understanding the wide-ranging issues, aims, and history of art law. Thus, students should ask any clarification questions or further inquire about any aspects of the reading they did not fully comprehend. A class discussion of the “so what” of art law should ensue. Pupils should reflect on why this topic is important to examine and dissect, and whether they were surprised by the subject’s broad scope. Further discussion questions might consider who has the power to change the definition of art under the law? Do the readings suggest that legal revisions occur from the top down, or through grass roots movements?

The Art Market: Collectors, Dealers, Auction Houses, and Museums

(Weeks 2 and 3)

Following an initial broad introduction to Art Law, learning about the art market will provide students with the necessary knowledge in order to adequately understand later course material. For example, one cannot effectively comprehend why an artist would sue his or her dealer without first knowing how artist-dealer relationships typically work. Furthermore, studying who shapes the contemporary art market reveals where power lies in the art world, and often parallels who is dominant in the courtroom. Also, because all art law cases involve artists, museums, auction houses, dealers, or collectors, knowing the transactions and relationships between each group is important. After this unit, students will understand the functions and motives of different people and businesses in the art world, as well as how it reflects our society as whole. Each assigned reading illuminates the tensions existing among artists, museums, dealerships, collectors, and auction houses, as they all compete for control and proper representation. Awareness of these tensions will set the stage for legal cases and themes examined in later units.

Thompson, Don. *The \$12 Million Stuffed Shark: The Curious Economics of Contemporary Art*. London: Palgrave Macmillan, 2008.

SUMMARY

In his book, Thompson details the private and public workings of the contemporary art market, analyzing the scene through both an economic and psychological lens. Throughout the chapters, Thompson discusses the role that museums, galleries, and auction houses, along with collectors and dealers, play in the buying, selling, and pricing of art. The average reader is able to grasp Thompson's intricate economic analysis of the art market, as he provides concrete examples with each assertion. He begins the book by highlighting the current inflated state of the contemporary art market, claiming that art sells for millions of dollars not due to quality, but mainly as a result of provenance and marketing strategies. Therefore, certain branded dealers, auctions, and collectors shape which art becomes highly valued, since most people buy into the trends set forth by these celebrity-like collectors and institutions. He highlights branded dealers, like Larry Gagosian and Jay Jopling of White Cube Gallery in London, revealing how they do not sell art, but instead "place" it (36). For example, first in line to receive the art from these superstar galleries are branded museums, like New York City's MoMA, or branded collectors like Charles Saatchi and Steve Cohen. Selling to famous museums and collectors raises the artwork's provenance, and consequently its value. Thus, in the upper echelons of the art world people begin "buying art with the ears rather than the eyes" (36). In other words, collectors will buy extremely pricey art without even seeing the work, solely because it came from a branded gallery, branded auction house, or was in a branded museum, or a branded collector bought a similar work by the same artist. After thoroughly depicting the many players in the art world, even discussing art critics and scholars, Thompson concludes by illustrating how art is ultimately a poor investment, as the work's value will probably not increase overtime.

JUSTIFICATION

While the art market is seemingly unrelated to art law, the two are in fact directly connected, as many legal issues arise with art transactions. Through reading this book, students will gain insight into how the art market operates, which will facilitate an understanding of many legal cases dealing with art market issues. The book illuminates legal issues that stem from artist-dealer contracts, consignor-auction house agreements, or disputes over ownership or authentication. For example, Thompson discusses how branded artist Damien Hirst claims ownership over spot paintings, and even sued British Airways airline Go for breach of copyright after it featured colored spots in an advertisement (47). Through learning about the immense influence certain artists, like Damien Hirst, have on the contemporary art market, students will understand why an artist would be compelled to file a lawsuit. Clearly, in the above case, Hirst felt that another company was profiting from an image that belonged to him, and that only he should be able to exploit. Ultimately, one cannot efficiently understand art law without first being aware of the many institutions and outlets that control the movement of art.

Thompson's book further enhances student learning, as it sets the stage for later course themes. For example, issues of international law are introduced when Thompson discusses the different ways in which governments support the arts. He explains how the French government gives the visual arts about twenty times as much financial support as the U.S.A. National Endowment for the Arts does. However, this difference in government funding reflects the fact that the New York contemporary art market produces annual sales eleven times greater than Paris (181). Thus, the Parisian government feels increased government funding is necessary in order to compete with the lucrative U.S. art market. Furthermore, these statistics reveal which nations are more economically powerful in the art world. Another course theme that the book

addresses is the issue of art theft. By initially gaining sufficient knowledge of the legal art market, students will better understand the art black market, discussed later in the Art Crime unit.

POSSIBLE CLASS DISCUSSIONS

This book lends itself to numerous rich classroom discussions. Most notably, the art market illustrates where power lies within the art world. Certain branded dealers, collectors, artists, museums, and auction houses, all come together in order to legitimize which artworks are superior and most valuable. In the book, Damien Hirst is quoted stating, “Money complicates everything. I have a genuine belief that art is a more powerful currency than money—that’s the romantic feeling that an artist has. But you start to have this sneaking feeling that money is more powerful” (177). It would be interesting to unpack this quote in a classroom dialogue, as it introduces the debate over what the dominant force shaping the art market is. Unfortunately, in our hyper-capitalist society, the answer appears to be money. Art that is highly priced, or bought by wealthy institutions and collectors, is perceived as highly valuable. Therefore, art becomes interpreted based solely on price and provenance. Does this render current art historians and art critics obsolete in determining socially important and constructive art? How will this affect that artistic canon in years to come?

Power relations can also be discussed through analyzing the current power struggle between dealers and auction houses as they vie for control of the market. For example, Thompson discusses how auction houses ultimately dominate the art market, drastically skewing market prices with chandelier bids and private treaty sales. However, recent commercial art fairs, like Maastricht, Art Basel, and Frieze, have allowed dealers to compete with auction houses. These unprecedented art fairs represent a momentous change in art buying. Why are collectors suddenly flocking to this method of sale? Does the popularity of art fairs merely reflect the

increasing dominance of capitalism, as buying at fairs mirrors a shopping mall experience? How will this shape the future art market?

Vyas, Stephanie G. “Is There an Expert in the House? *Thomson v. Christie’s*: The Case of the Houghton Urns.” *International Journal of Cultural Property* 12 (2005): 425-441.

SUMMARY

The article outlines the 2004 case taken to the London High Court, *Thomson v. Christie’s*, where Taylor Thomson sued Christie’s Auction House and the consignor, Marquess of Cholmondeley, for misrepresenting a pair of porphyry urns she purchased from the auction house in 1994 for nearly £2 million. Vyas contextualizes the case by providing background on Christie’s; detailing the conspiracy between Christie’s and Sotheby’s to fight the art market crash of 1990 by agreeing to charge identical commissions on sales. Consequently, the auction houses were charged with breaking U.S.A. anti-trust laws and were fined \$256 million in compensation to clients. However, Vyas illustrates that by 2003 the art market was recovering, as many auctioned works attained prices exceeding pre-auction predictions. Thus, within this newly positive and confident market atmosphere, the art world anticipated the *Thomson v. Christie’s* verdict, as the ruling would imply auction house liability and its possible influence on the art market.

Vyas provides the Christie’s catalogue entry for the pair of porphyry urns, known as the Houghton urns, and the language describes their impressive provenance while also insinuating they are antiques, dating to the eighteenth century, since they are in the Louis XV style. However, after purchasing the urns, Thomson came to suspect that the vases in fact dated to the nineteenth-century Second Empire revival of the Louis XV style, which would significantly reduce their worth. Under the *Misrepresentation Act*, which “allows claims for damages when one party suffers a loss because of the misrepresentation of another party,” Thomson asserted

that Christie's, along with her Christie's special client advisor, had falsely depicted the urns (428). Thomson further claimed that Christie's had breached their duty of care to her, which is a legal obligation to exercise caution, which Christie's neglected as they did not inform her that the urns could potentially date to the nineteenth century. After the essay outlines the lengthy legal investigation, which attempted to authenticate the works, the judge ruled in Thomson's favor, requiring Christie's to compensate Thomson in damages. However, Christie's appealed the court's decision, ultimately winning the case on the grounds that in their professional opinion they believed the urns were eighteenth-century products, and that their behavior did not breach the professional standards of their business.

JUSTIFICATION

This reading appropriately supplements the book *The \$12 Million Stuffed Shark*. While *The \$12 Million Stuffed Shark* dedicates a couple of chapters to uncovering the workings of the Christie's-Sotheby's duopoly, reading a detailed account of a specific lawsuit further illuminates issues surrounding auction houses and the art market. For example, this article provides students with a concrete example of how a powerful auction house like Christie's directly shapes the art market. Since the lawsuit questioned the authenticity of the urns, they lost their worth on the art market, and Vyas predicts, "the Houghton urns may now be 'virtually unsaleable'" (437). Additionally, from this reading students learn the criteria courts use to establish authenticity of fine art, furniture, and decorative arts. The three criteria are provenance, expert evaluation, and scientific testing. However, these criteria must be used together, as alone each one is limited. For example, scientific testing can negate the authenticity of a work but cannot confirm its identity. Thus, students gain an understanding of how difficult authentication of art can be. Authenticating eighteenth-century urns in a marketplace full of nineteenth-century revivalist copies is nearly impossible. Therefore, the article also reveals the inherent uncertainty of the art market, as

problems often arise when dating and authenticating works of fine art, an issue *The \$12 Million Stuffed Shark* barely raises. This essay profiles a non-contemporary decorative arts case, usefully supplementing the *Stuffed Shark*'s focus on contemporary art.

POSSIBLE CLASS EXERCISES

After reading this article students will be asked to think critically about the author and his approach. Vyas presents the case, providing historical context, legal details, and relations to the larger art market, but is he neutral in his assessment of the lawsuit? Or does he seem to be biased towards either Christie's or Thomson? Students will be asked to consider the sources Vyas cites, and to contemplate how they might have affected his reading of the case. Finally, students should come to class ready to discuss their opinions on the trial's final verdict. Was Christie's justified in selling the pricey urns to Thomson, or do auction houses have an ethical duty to disclose that catalogue descriptions are potentially inaccurate? Ultimately, following the reading and class discussion, students should be fully aware of the legal risks associated with buying and selling art through an auction house.

Lind, Robert C., Robert M. Jarvis, and Marilyn E. Phelan. "Introduction to Museum Law." In *Art and Museum Law*, 425-449. Durham, North Carolina: Carolina Academic Press, 2002.

SUMMARY

This chapter introduces the concept of museum law, which refers to the many legal issues that arise within a museum setting. Despite a few exceptions, there is no overall body of law specific to museums. Therefore, museum law includes the regulations many individuals and organizations are subject to, since museums encompass many diverse positions under the law. For example, museums are both employers and merchants, they can accept grants from the federal government, or be governed by a board of trustees (in which case private trust administration laws are applicable), and if the museum has a restaurant, they may also be subject

to local health regulations (435). Evidently, the legal cases that arise differ between museums, as each museum operates differently. The chapter discusses how every museum should have in-house counsel added to the staff in order to handle legal issues, and that legal responsibility within a museum falls on the museum director (431). Therefore, along with the typical duties carried out by museum directors, they should also be highly aware of the day-to-day legal problems that could potentially arise.

Along with providing a history of museums as institutions, the chapter analyzes a specific case study involving museum law. The lawsuit, *Cuban Museum of Arts and Culture Inc. v. City of Miami* (1991), arose when the city of Miami terminated the land lease agreement it had with the Cuban Museum of Arts and Culture. The museum, a non-profit organization, first leased land from the city in 1981, a lease that was supposed to last for decades. However, after a controversial exhibition held at the museum, the city of Miami decided to terminate the lease. The exhibition displayed Cuban contemporary art and culture, and featured artists who had not rejected the communist regime, and who continued to live in communist Cuba. Many Miami citizens were opposed to the controversial art, even protesting the exhibition, yet the museum directors continued with the show anyway. Thus, while the city of Miami asserted that it terminated the lease based on other violations, like the sale of art prohibited by the lease, evidence suggested that the Miami city commission felt compelled to terminate the lease due to the outraged public. However, the court ruled that the museum's "conduct was constitutionally protected and that the conduct was a substantial or motivating factor in the governmental decision to deny a benefit" (441). Therefore, the city of Miami's termination of the lease was seen as unconstitutional, allowing the Cuban Museum of Arts and Culture to remain at the location.

JUSTIFICATION

Whereas *The \$12 Million Stuffed Shark* introduces the key role museums play in the contemporary art market, the book does not delve into museum law specifically. Hence, this reading will educate students on the many realms included in museum law, as well as providing them with a concrete example of a trial involving a museum. The specific trial discussed in the reading is especially appropriate for the class, as it reflects power dynamics, a major theme throughout the course. Clearly, the city of Miami felt it necessary to take action against the museum as their exhibit portrayed the unpopular ideology of communism. However, through taking political action, attempting to shut down the museum, the city of Miami was violating the museum's First Amendment right, Freedom of Speech.

POSSIBLE CLASS EXERCISE

Along with a class lecture on the major legal concerns of museums, a dialogue surrounding the identity politics and power dynamics at play in the case study would benefit students. The fact that the city of Miami constantly investigated to find a basis for evicting the museum demonstrates how people in power are often able to find roundabout ways to assert their dominance. Students should consider what the outrage of the Miami government, along with its populace, suggests about politics in the U.S.A. Despite the constitutional support of freedom of speech and diverse ideologies, do we in fact live in a hegemonic society? How does art subvert those in power? Does the court's ruling in favor of the museum demonstrate that marginalized groups possess power under the U.S. government?

International Law

(Weeks 4 and 5)

Since the previous units, Introduction to Art Law and The Art Market, establish a large amount of U.S. national policy regarding art, subsequently examining international art law makes sense. In this unit, students will observe the international flow of art and consider how art's global movement reflects worldwide power hierarchies. The readings included in this section position art law globally, highlighting how many issues surrounding art are universal problems. Discrepancies between different national policies are also addressed. International law raises questions and themes that will be re-examined later in the course. For example, issues of art as cultural property and how technology has transformed the global illicit art trade. Along with learning the technicalities of international law, students will ultimately recognize the universal significance and language art speaks.

DuBoff, Leonard D., and Christy D. King. “Art: International Movement.” In *Art Law in a Nutshell* 3rd Edition, 1-7. St. Paul, Minnesota: West Group, 2000.

SUMMARY

This chapter in *Art Law in a Nutshell* provides a broad overview of the main international issues surrounding art. The international movement of art is beneficial in that it educates people on diverse cultures, art forms, and promotes transnational understanding. However, the reading also illuminates the troubles that arise as art permeates national borders, like loss of important cultural/ethnic heritage and pride. Therefore, countries must negotiate a balance between the international demand for art and protection of national treasures. Many nations employ import and export restrictions in order to control the flow of their art. The chapter presents numerous examples of interesting international conflicts violating these regulations. Other methods of regulating the international art trade include treaties, self-regulation by non-governmental organizations, and sanctions for vandalism and theft.

JUSTIFICATION

Assigning this reading first on the syllabus under the International Law unit will provide students with an expansive introduction to the diverse issues art raises internationally. The chapter sets the stage for issues of identity politics, the illegal/legal art market, and ethical debates that will be exemplified more concretely through the subsequent readings on the syllabus. The reading stresses that the international regulation of art is fairly new, since for centuries art’s global movement functioned without any effective legal or moral restraints. Consequently, many artworks are still globally displaced, causing tension between nations who both feel ownership over a work. After reading this chapter, students will have a better understanding of the global context within which art exists, and the varying laws different

nations adopt. Thus, the following cases they study on the topic of international law will be more comprehensible.

POSSIBLE DISCUSSION QUESTIONS

Why do you suppose international art transactions were unregulated for so long? How does art possess extreme cultural and national importance? How does the universal value of art affect international politics both positively and negatively?

Mashberg, Tom. “Hopis Try to Stop Paris Sale of Artifacts.” *New York Times*, April 3, 2013.

Mashberg, Tom. “Secret Bids Guide Hopi Indians’ Spirits Home.” *New York Times*, December 16, 2013.

SUMMARY

In the first article, Mashberg provides details on a Paris auction of 70 masks sacred to the Hopi Indians of Arizona. He reports that the auction is set to take place on April 12th at the Néret-Minet auction house, and is estimated to generate \$1 million. Outraged, the Hopi objected, asking federal officials to stop the auction, since the masks belonged to the tribe as cultural property. The Hopi claim the masks were stolen in the past, some confiscated by missionaries, robbed from unattended shrines or altars, or sold by tribe members. Furthermore, the Hopi view auctioning off these masks as sacrilege, since they are not “masks,” but the very embodiment of divine spirits. These “masks” are crucial to many coming-of-age ceremonies and harvest rituals that are still widely practiced today. Countering the Hopi’s allegation, the auction house vowed that the sale of the masks is legitimate, since they were legally bought in the U.S.A. over 30 years ago. Thus, the director of the auction house justified the sale as “not just a business transaction but a homage to the Hopi Indians” (2). Clearly, the Paris auction house feels no moral obligation to return the Hopi cultural treasures, and legally entitled to sell the masks.

The more recent follow-up article discusses how the conflict between the Paris auction house and the Hopi of Arizona unfolded. While the Hopi attempted to legally retrieve their cultural heritage from the Parisian auction house, no international law supported the Hopi in reclaiming their divine masks. When the tribe attempted to prevent the sale in French court, they were unsuccessful. However, the Annenberg Foundation decided to help the Hopi repossess their masks, and in a repatriation effort, they secretly planned to bid by phone in the auction in France. Ultimately, the Annenberg Foundation bought back 21 Hopi objects for \$530,695. Although they were not able to purchase all of the Hopi cultural treasures for sale, they were largely successful in their recovery endeavor.

JUSTIFICATION

Studying this conflict enhances the course, since it exemplifies the contradictions and disparities in international law. For example, foreign nations often depend on the U.S.A. to retrieve art smuggled into America, yet paradoxically, the U.S. government has no similar laws protecting American artifacts abroad. Thus, a disparity of power exists internationally, where foreign countries are capable of retrieving art from the U.S.A., but the American government is extremely limited in its power to retrieve cultural objects taken overseas. This article also directly connects to legal issues raised in *Priceless*, which students can draw parallels to once they read it later in the semester. As *Priceless* demonstrates, the 1990 Native American Graves Protection and Repatriation Act governs the treatment and sale of Native American art domestically, outlawing the sale of certain items like Bald Eagle feathers. However, unfortunately no equal law exists in Paris, where there is a lucrative market for Native American art. Thus, this reading mainly highlights contemporary issues of identity, both in America and abroad. The article addresses how historically the American government has ignored many cultural heritage issues of Native Americans. Consequently, there is little concern for the

growing international market for Native American cultural property, despite its damaging effects on Native American lifestyles. Law on paper is not always practiced, evident in the fact that many American museums often hold onto illicit Native American collections, despite laws in place, since following through and enforcing the law is expensive and can take years. Therefore, this case illuminates power dynamics, both economically and politically.

Reading the second Mashberg article is necessary, as it discloses the later developments in the case, providing more depth to analyzing the conflict. It also stresses the importance of following up on contemporary legal matters, as verdicts can always be overturned, or new laws adopted. Most substantial in this reading is the fact that no laws eventually aided the Hopi in retrieving their property, but they were ultimately forced to buy back their own sacred objects. Thus, the returning of the masks to the tribe is bittersweet, as it highlights the unfortunate reality of the commercialization of Native American religion and culture. Further complicating the return of the masks are the logistics of shipping internationally. Since the Hopi perceive the objects not as art but as sacred spirits, they believe that wrapping the masks would suffocate the spirits (3). The article also is telling of the auction process, supplementing the Art Market unit nicely. The fact that the Annenberg Foundation had to bid secretly on the masks exemplifies the fluidity of art prices, since the auction house would have increased the price of each mask greatly had they known one collector was attempting to purchase all of the Hopi objects.

POSSIBLE CLASS DISCUSSION

A class discussion supplementing these articles should consider how cultural differences influence legal perceptions. For example, the Hopi do not even view the masks as art, they are divine spirits, and therefore, they cannot be owned and purchased by an individual. Instead the Hopi view the masks as owned communally. These differing views towards the masks create conflicting legal opinions as to whether the masks are owned legitimately or illicitly. Rich

discussion questions could ask why non-Hopi, Europeans and Americans would even want to purchase these artifacts? Why is this Native American art selling at such a high price? Could an argument be made that the Euro-American desire for this art is rooted in Orientalism and Imperialism?

Cuno, James. "Introduction." In *Whose Culture? The Promise of Museums and the Debate Over Antiquities*, edited by James Cuno, 1-36. Princeton: Princeton University Press, 2009.

SUMMARY

The introduction to Cuno's book provides an overview of the argument made by museums and scholars for a universalistic attitude towards culture and antiquities. Cuno strongly believes that ancient artifacts do not belong to a specific nation state simply because they were excavated there, but that these antique treasures belong to mankind at large. Therefore, he refutes certain cultural property laws that limit the transportation of antiquities, with or without provenance, deeming that these laws only serve a nationalistic political agenda. Cuno briefly discusses the argument contrary to his, often presented by archeologists, or associations like the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. These groups believe that context is essential for understanding an artifact, and thus, if it is removed from its original framework the object loses much of its meaning. Cuno combats this view by giving examples of artworks that were technically looted, and are without provenance by today's standards, but certainly contain cultural value. His two examples are *Laocoön* and *The Rosetta Stone*. Cuno is explicit in stating that museums agree with archeologists on the fact that archeological context is important and its damage should be discouraged. However, he believes that looting and destruction are inevitable, and that once these unknown artifacts surface, the museum can best protect and preserve them. Thus, museums should not denounce these antiquities as meaningless and illegitimate, as this

only results in the artifact disappearing again, since looters rarely return a piece to its rightful site. Overall, he establishes that his book attempts to challenge the notion of museums as purchasers of illegitimate antiquities, and instead propose that the antique collections of museums are collected responsibly and for society's benefit.

JUSTIFICATION

Examining the introduction of this book in the class will be constructive, as the complex debate over antiquities in the art world relates to numerous course themes. Mainly, this source introduces major international legal issues, as well as philosophical and moral concerns, regarding cultural ownership and who has a right to claim art as theirs. For example, Cuno argues that modern nations' claim of descent from past cultures, like Italy from Rome, or China from Ancient Qin, is "nationalistic fantasy based on the accident of geography and enforced by sovereignty"(28). In other words, he believes artifacts discovered in these regions, dating from these ancient cultures have no legal or ethical obligations to remain in the country of origin, since they serve a universal purpose to educate humanity. However, Cuno does not take into account the power dynamics involved in universalizing cultural treasures. While he accuses these modern nation-states of selfishly hoarding human culture, he does not address how universalizing culture, or allowing museums to acquire foreign relics, would perpetuate the flow of art from developing countries to richer nations, mainly London and New York. Already the high prices museums in the West pay for antiquities encourages looting in poorer nations, making this reading a nice precursor to the book *Priceless*, where issues of archeological looting are discussed. This reading is also beneficial for the course since it provides information on different museums and their current legal policies for acquiring antiquities. Students will also learn about important historic legal battles concerning international law, museums, and antiquities. Like when Marion True, curator of antiquities at the Getty, was prosecuted for

conspiring to acquire looted artifacts for the museum. Cuno's argument highlights the complexities of drafting universal laws against acquiring artifacts whose situations vary culturally, politically, and archeologically. The introduction provides the names and opinions of scholars who share Cuno's viewpoint and contributed to his book, like Kwame Anthony Appiah. Thus, students gain insight into one side of this very controversial and contemporary debate regarding antiquities and international law. Paired with Atwood's article "Guardians of Antiquity?" written in response to Cuno, students will thoroughly understand both sides of this dispute.

POSSIBLE CLASS DISCUSSION

Although students will discuss this article at length after reading Atwood's piece, the class should fully understand Cuno's viewpoint and universalistic perspective on culture before the in class debate. Students should consider whether they agree with Cuno. Should nations modify current international laws so art institutions are less limited in their collections? Do you agree that important antiquities can better benefit society if on display in a museum?

Atwood, Roger. "Guardians of Antiquity?" *Archaeology* 61 (2008): 18-70.

SUMMARY

Atwood's article counters the opinion of James Cuno, former president and director of the Art Institute of Chicago, on issues regarding the obtainment and cultural ownership of antiquities. While Cuno expresses a Universalist attitude towards antiquities, believing them the cultural property of humanity, Atwood possesses a nationalist viewpoint, seeing the obtainment of looted antiquities by museums as robbing a region of its culture. Thus, the clashing philosophical beliefs on ownership lead to legal battles regarding the rightful home for certain artifacts. One case example the reading discusses occurred in the 1990s, when Boston's MFA

was legally forced to return over a dozen antiquities that had been stolen from Italy. Atwood accuses museums of having an elitist outlook on the situation, haughtily appointing themselves saviors and protectors of culture. Yet, he illustrates how this elitist attitude does not preserve culture, but in fact destroys it. He argues that when antiquities are robbed of their original context, people are cheated out of the ability to learn more about their ancient past. Ironically, Cuno perceives international laws that prevent museums from acquiring antiquities as elitist. Atwood quotes Cuno, who claims “Government elites decide what the national culture is and pass laws barring the export of art that reflects that culture” (20). Evidently, this debate directly epitomizes problems of identity politics, as both parties feel an elitist institution is attempting to shape identity through art. The interconnection between art, identity, politics, and power is a major theme throughout the course, making Atwood’s article contesting Cuno an appropriate addition to the syllabus.

JUSTIFICATION

The philosophical debate surrounding whether ancient art belongs to a specific nation or universe is an important one, as the possession of art also reflects international power dynamics. The reading illustrates that looting of artifacts is not a recent issue by providing a brief history of the laws surrounding antiquities. The article effectively describes certain legal precedents that student should be aware of in order to fully understand the debate. For example, knowledge of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property is important, as it was the first major piece of international law. The law devoted that governments combat the trade of objects looted from archeological sites, largely in response to reports of heavy looting in Guatemala and Sicily earlier that year. Atwood asserts that after the conference, “no one could possibly plead ignorance about what the antiquities trade was really about: ‘theft, clandestine, excavations, and

illicit exports” (19). Evidently, the convention established that purchasing looted artifacts was a moral issue as well as a legal one.

CLASS DEBATE EXERCISE

As the syllabus explains, following the Cuno and Atwood readings students will engage in a formal debate (see syllabus for details). Debating who can claim cultural ownership over antiquities in a classroom setting will constructively accompany these readings. The dialogue will raise some meta questions, like do ancient artifacts have anything to do with modern cultural identity? Is the enlargement of encyclopedic museums worth the destruction of certain archeological sites? What are some consequences of allowing the free trade of antiquities, besides the obvious increase in archeological looting?

Art Crime

(Weeks 6 and 7)

Art crime is one of the most obvious art law concerns, since it deals directly with the illicit misplacement and defacement of art. This unit appropriately follows the previous sections, as issues within the art market and international law coalesce in art crime cases. Studying two major examples of art crime, the Nazi looting during WWII and FBI cases of stolen art, illuminates the most significant offenses against art throughout the twentieth and twenty first centuries. The sources also explain motivations for art theft, along with the limitations of stealing masterworks. After this unit, students will understand why the destruction and looting of art is a crime against all of humanity.

Allen, Joan. *The Rape of Europa*. 117 minutes. DVD. Directed by Richard Berg, Bonni Cohen, and Nicole Newnham. Santa Monica: Menemsha, 2007.

SUMMARY

The documentary *The Rape of Europa* recounts Hitler's systematic looting of fine art during World War II in an effort to create the world's greatest art collection. Hitler planned to erect the Führermuseum in Linz, a large-scale museum that would house Europe's greatest art and make the small industrial city of Linz the new cultural capital of Europe. While he never built the museum, due to his loss of the war, the documentary describes the extreme devastation that the Nazi plundering of art caused. Never before had art been stolen and destroyed on such a large scale, a crisis the art world has still not fully recovered from. The film highlights countless works of art that remain missing, like Raphael's *Portrait of a Young Man*, and around 59,000 works stolen from Warsaw. Not only is much of the art that was destroyed irreplaceable, but its ruin simultaneously erased culture. Through many interviews the film successfully conveys the Nazi's strategy of stealing art they deemed extremely valuable, while obliterating "degenerate" art, like modern art or works created by "lesser races," like Jews and Slavs. While the latter half of the documentary describes the salvaging of Europe's art by a troop of Allies known as the Monuments Men, the film's ending also depicts the continuing emotional tension throughout Europe regarding the rightful ownership of priceless works of art.

JUSTIFICATION

I placed this documentary on the syllabus under the Art Crime unit, as the source will enrich students' understanding of one of the largest organized art thefts in history. While the film also raises issues regarding other themes on the syllabus, like International Law and The Art Market, these subjects are discussed before Art Crime in the course, and therefore, students will be able to make connections and discuss the interrelations of these issues. For example,

regarding international law, the returning of art to its original nation, the culture in which the piece was created, is difficult, as legal cases on such a grand scale as the Nazi lootings are unprecedented. Also the film discusses how after the fall of the Soviet Union in 1991 reports surfaced of a secret storage room filled with over 10,000 trophy artworks that Russia acquired from the Nazi's after the war. While Russia supports keeping the art, and even passed a law legitimizing their ownership of it, there is no basis in international law for their continued possession of the works. Through studying this vast looting and misplacement of artworks students will learn the moral and ethical complexities of international law during wartime. When considering this documentary in relation to the art market it is interesting how theft influences the pricing of art. For example, the documentary discusses how if Raphael's *Portrait of a Young Man* were to show up at auction today it would be worth \$100,000,000 due to its historical importance. However, if this work hadn't been missing for so long it wouldn't be valued at such a high price. *The Rape of Europa* is a valuable teaching tool since it portrays the emotional, sentimental, cultural, historical, and educational significance of art, and the consequences of the theft and destruction of such important artworks.

POSSIBLE CLASS DISCUSSION

Evidently, many post-war debates concerning the rightful custody of artworks persist despite the downfall of the Nazi regime. It could be beneficial for students to have an in-class dialogue after watching the film concerning different people's perspectives on why they feel justified and motivated to claim certain art. Surely, art as property is an important theme throughout the film, and ownership is often hard to prove, as the documentary shows the heirs of art collectors arguing with museums over rightful custody. Other guiding questions include: how does the acquisition of art display power? How do certain laws define "art" and "identity"? This question relates to many themes within the course, yet directly encompasses how Hitler's establishment of

certain laws created an air of “legality” to justify his plundering and decimation of works. How did Hitler attempt to erase culture and to shape/ re-position identities through the destruction of art?

Wittman, Robert K., and John Shiffman. *Priceless: How I Went Undercover to Rescue the World's Stolen Treasures*. New York: Crown Publishers, 2010.

SUMMARY

In this autobiographical account, Wittman discloses his twenty years in the FBI, working primarily to solve art crime. Along with detailing many of the cases he solved over the years, Wittman goes into the history of each artist and the work he recovered, allowing the reader to realize the extreme value of the artwork. For example, he discusses how Rodin's *Mask of the Man with the Broken Nose* (1864) helped inspire the Impressionist movement, causing readers to realize the extreme importance of the work. Thus, when he retrieved the sculpture that went missing from the Philadelphia Museum of Art in 1988, Wittman's career in art crime was launched.

The story is filled with fascinating statistics that illuminate the concealed art black market. Art and antiquities theft ranks fourth in transnational crime, after drugs, money laundering, and illicit arms shipment. Making up 10% of all art crime are museum heists. More than half of all stolen art is taken from private homes and organizations. Wittman explains that art crime is a \$6 billion business annually, and for many works the black market obtains only 10% of open market value. Thus, the more famous the painting the more difficult the sale, since more people are aware of its illegitimacy and high profile. One example of this, which was astounding to learn about, was the theft of Eduard Munch's *The Scream*. The thieves could not sell the work anywhere until they agreed to sell it to undercover Norway police for \$750, 000, despite the work being worth \$75 million. Hence, many times throughout the book, Wittman

highlights how art thieves typically are not in it for the love of art, and rarely do they know much about the painting they steal or the art market, but they are in it strictly for the money. Therefore, they take whatever price they can get for the stolen a work.

In addition to providing details on the black market and cases he worked, Wittman gives a history of the legitimate art market and its relation to art crime. For example, with the increase in art pricing in the mid.-20th c., thieves began stealing now costly works. The most famous case being the 1969 theft in Palermo of Caravaggio's *Nativity with San Lorenzo and San Francesco*. As the art market continued to boom throughout the '80s and '90s so did art theft. Thieves worldwide stole more than \$1 billion worth of paintings from 1990 to 2005. One of the most famous art crime cases from this period was the 1990 theft from the Isabella Stewart Gardner Museum in Boston. Eleven masterworks were stolen, including several Rembrandts and a Vermeer, culminating in a loss of \$500 million and making the case the largest property theft in history. While Wittman was working the case for several years, due to bureaucratic issues many of their covers were blown, and although they were close at times, the case remains unsolved.

JUSTIFICATION

Wittman's book is an excellent source to put under the Art Crime unit on the syllabus since it combines many of the course themes with art history in a riveting and action packed narrative. Thus, I believe students will thoroughly enjoy reading this book while also learning about most of the issues surrounding contemporary art crime. The most apparent course themes the book extracts are matters relating to international law and the art market. However, the book also touches on themes of technology, identity, and power dynamics. Due to the international art trade, both legal and illegal, Wittman often travels internationally to solve crimes. He is always extremely aware that he is a guest in a foreign country, and therefore, must abide by the host country's laws, even when they are contradictory to American ones. For example, in the U.S.A it

is illegal to sell bald and golden eagle feathers. Yet, in Paris, a Native American full headdress of eagle feathers can sell legally for around \$80,000. Unlike some of his colleagues, Wittman is sensitive to transnational differences, even claiming it a “folly to try and address a global problem without taking into example cultural differences” (20). At times in the story the difficulty of attempting to solve a case by cooperating with different police forces is evident. However, often they are able to join forces to successfully capture the art thieves, as was the case when Wittman worked with Swedish and Danish police to retrieve a Rembrandt worth \$35 million. Especially revealing of international relations regarding art is the 2008 International Conference on Organized Crime in Art that the United Nations invited Wittman to attend. The conference illuminates the great disparity among nations in relation to how they prioritize art theft. For example, while the Italian Carabinieri employs a three hundred-person full-time art and antiquity squad, Wittman was the United State’s sole art crime full time FBI agent in 2004. Before 1990 it wasn’t even a federal crime to steal from a museum in the U.S.A. In response to the Gardner heist congress passed a law stating anything worth more than \$5000 stolen from a museum was a federal crime, and Wittman was the first to utilize the law in 1995.

Relating to increased globalization and technology, Wittman’s narrative discusses how technological advances have made art crime easier. For example, looters employ global tracking devices, sellers can post items on eBay or in chat rooms, and there are more efficient shipping methods. Also, mobile phones make communication easier, while certain customs reforms allow for smuggling stolen art across borders. Like other sources on the syllabus show, technology has completely transformed the art world, and consequently the underground art world has benefitted also. I think it would be important for students to take note of this correlation. Another major course theme apparent in Wittman’s story is art and identity. Tracking the path that stolen artifacts travel reveals certain power dynamics between developing and developed nations.

Similar to many illicit drugs, the buyer's market in developed nations drives supply in less-developed places. For example, artifacts stolen from Northern Africa or the Middle East will then travel to Dubai, Abu Dhabi, and ultimately to stores in Paris, Zurich, Tokyo or New York. Another popular route begins with artifacts stolen from Cambodia, Vietnam, and China, and then smuggled through Hong Kong to Australia, Western Europe, and the U.S.A. These markets are referred to as "gray markets" since the illegal market largely supplies a legal one. Clearly, the legal art world is more complicated than is often publicized, and this source does a nice job of illustrating how there is not such a clear division between legal and illegal activity. Also, an average looter earns only 1-2% of the ultimate sale price in a different nation, further illustrating economic power dynamics and its relation to certain identities and art.

POSSIBLE CLASS DISCUSSION

To prompt a rich discussion, I would definitely ask students to unpack the quote, "art thieves steal more than beautiful objects: they steal memories and identities" (20). I believe this quote encapsulates why governments deem such art "priceless." I would ask students to identify specific cases in the book that illustrate when a culture's identity is at stake with the stolen painting. For example, Wittman retrieved \$1.2 million worth of Norman Rockwell paintings from a collector in Brazil. While he previously was denied permission to work the case in Brazil for international legal reasons, after September 11, 2001 the FBI supported the mission to retrieve the works. Evidently, because Rockwell is such an iconic American artist, and because his work *Spirit of '76* (1976) depicts the World Trade Center towers in the background, America felt it necessary to take back a cultural treasure. Within the book there are many other examples surrounding cultural identity and art, and I believe this would generate an interesting discussion that could easily be compared to themes in *The Rape of Europa*.

First Amendment Rights: Freedom of Expression

(Weeks 8 and 9)

The First Amendment upholds one of America's most esteemed values: freedom. Yet, for a nation that prides itself on liberty, ironically it stifles unpopular forms of expression. The inherent hypocrisy of U.S. legal trials involving freedom of speech is important to critically examine, as power dynamics are frequently at play. The attempted censorship of art often reveals efforts to suppress marginalized ideologies or groups. Through examining significant art lawsuits involving First Amendment rights, students will discover how these cases reflect the subjugation of certain minorities in an effort to preserve hegemony. Ultimately, this unit will illuminate art as both a threatening and powerful tool for social change, causing struggles for artistic freedom of expression to persist.

DuBoff, Leonard D., and Christy D. King. “Freedom of Expression.” In *Art Law in a Nutshell* 3rd Edition, 222-243. St. Paul, Minnesota: West Group, 2000.

SUMMARY

This chapter outlines the human rights protected under the First Amendment, which primarily serves to uphold citizens’ freedom of expression. The reading provides a historical framework for the First Amendment, underscoring the law’s transformation over time. The first significant legislative effort at forming a first amendment law resulted from *Schenck v. United States* (1919). This case produced a doctrine designed to fairly protect unpopular forms of expression. An important subsequent lawsuit that shaped the current understanding of the First Amendment was *Brandenburg v Ohio* (1969) which differentiated between “pure speech” and “symbolic speech,” granting “pure speech” more legal protection (225). The reading also highlights important cases that defined obscenity. Initially, the case *Roth v. United States* (1957) established a test in order to determine whether the material, an allegedly obscene book and circulars, was in fact obscene. However, this test was later modified in *Miller v. California* (1973), which determined that a work is considered obscene if it depicts or describes “sexual conduct specifically defined by the applicable state law,” and whether “the work, taken as a whole, lacks serious literary, artistic, political, or scientific value” (236). The continued implication of this test is that any work of “serious value” cannot be considered obscene. While many other case examples are discussed throughout the chapter, these are the major historical trials that largely shaped the First Amendment currently employed in America.

JUSTIFICATION

Although many of the cases discussed in this chapter do not necessarily fall under the “art law” category, the reading is helpful in describing the specifics of the First Amendment, while also situating the law historically. Historical context is important when studying law, since

one must be aware of precedents in order to argue why a person is guilty or not. Positioning a trial historically can also illuminate struggles that have persisted for decades. In this case, the reading reveals how restriction of artistic freedom is not a new phenomenon, but has been implemented since the Middle Ages in Europe, when the dominant Roman Catholic Church would persecute artists who spoke out against the religion (223). Thus, through tracking legal continuations and transformations, students realize how shifts in the law reflect cultural and ideological changes overtime. Furthermore, the reading discusses lawsuits that seemingly had nothing to do with art, yet largely impacted later art law cases. For example, *Spence v. Washington* (1974) provided a basis for determining when expression approaches “pure speech” and is therefore legally protected. In this case, a student protesting the Kent state tragedy taped an upside down peace sign to an American flag and hung it outside of his window. In deciding that the expression was protected under “pure speech,” the student was not prosecuted for flag desecration. This framework affected the art world in 1970 when a New York gallery owner was convicted for displaying art where the United States flag was in the form of an erect, phallic symbol. Defendants in the case, entitled *People v. Radich* (1970) argued that the work was protected under the First Amendment using *Spence v. Washington* as a precedent. Thus, the reading exemplifies an important class concept: that “art law” is not separate from the nation’s larger laws and constitution, but in fact directly relates to other cases that may have nothing to do with the art world.

POSSIBLE CLASS EXERCISE

Despite being mostly an introductory reading, this chapter prompts an interesting dialogue surrounding art as a form of protest and subversion. People claim that a picture is worth a thousand words. It would be interesting to ask students what they think about this statement and how it relates to the power of art. Clearly, the lawsuits discussed in the reading demonstrate

that art is an immensely powerful tool. Can art be more influential than people in power? It would also be beneficial to relate this discussion to methods of oppressing artistic expression external to a court of law. For example, can galleries simply not display an artist's work for political reasons? Can informal censorship be more effective than legislation in banning an artist's work?

Darts, David. "The Art of Culture War: (Un)Popular Culture, Freedom of Expression, and Art Education." *Studies in Art Education* 49 (2008): 103-121.

SUMMARY

This article investigates "the culture wars" in the United States; a term that first emerged during the 1980s and later gained prevalent usage during the 1990s. The phrase denotes the rise in censorship and criticism of certain material, deemed inappropriate by conservative politicians and leaders, in an attempt to control American culture. James Davidson Hunter's book *Culture Wars: The Struggle to Define America* (1991) largely popularized the term, as Hunter depicted the disparity in American culture and politics "over defining issues like abortion, separation of church and state, censorship, homosexuality, and funding for the arts" (104). Darts first explains the constraint on "indecent" material in popular culture, illustrating how the Federal Communications Commission (FCC) threatened major networks over the years, ~~like NBC and CBS,~~ leading the United States House of Representatives and Senate to eventually pass the Broadcast Decency Enforcement Act in 2006. Regarding censorship of contemporary art, Darts outlines the major lawsuits of the late '80s and early '90s that resulted in the cutback of federal funding to the National Endowment for the Arts (NEA). Such cases he details include the controversy over Dread Scott's installation, *What is the Proper Way to Display a U.S. Flag?* (1989), the American Family Association and members of congress' outrage surrounding Andres Serrano's *Piss Christ* (1987), Robert Mapplethorpe's exhibition *The Perfect Moment* (1989), and

finally Chris Ofili's *The Holy Virgin Mary* (1996) which upset patrons of the Brooklyn Museum of Art. The article updates information on the culture wars in the art education community. For example, in 2006 a fifth-grade teacher in Texas, Sydney McGee, was fired from the Frisco Independent School District after parents were infuriated that she took students to the Dallas Art Museum where they were exposed to nude art representations. The National Art Education Association (NAEA) states, "The art educator should impress upon students the vital importance of freedom of expression as a basic premise in the free democratic society and urge students to guard against any efforts to limit or curtail that freedom" (115). Yet, ironically the NAEA took no action when several art educators, like McGee, were targeted in lawsuits during the '90s. Darts concludes by revealing how restricting art curricula ultimately infringes on the intellectual rights and freedoms of students as well as teachers, and he calls for the NAEA take action against attacks on art teachers' freedoms.

JUSTIFICATION

Darts' essay complements the previously assigned reading. Whereas DuBoff and King thoroughly contextualize and detail the First Amendment, Darts relates freedom of expression to the art world at large. Although he focuses on popular cultural cases of censorship that do not directly relate to the class, his section on contemporary art effectively summarizes the most significant attacks on artists throughout the culture wars. These cases are important due to their enormous impact on the art community. While the controversy surrounding the artworks discussed in the article obviously impacted the artists and the display of their art, it simultaneously spurred government legislation. Thus, while laws clearly influence art, art in turn can shape laws, illustrating the potential power artists' contain. This article further enhances the course as it broadens the scope of art law to include trials concerning art educators and curricula, again reinforcing how complex and wide-ranging trials related to art are.

POSSIBLE CLASS EXERCISE

Most notably this reading conjures up issues relating to identity politics. Students should discuss how these controversial art pieces by Scott, Serrano, Mapplethorpe, and Ofili challenge hegemony in the U.S.A. Students should research and analyze events contemporary to the controversy that could have informed the public's opinion on these works, consequently contextualizing the cases. For example, people probably had an increased sensitivity to Mapplethorpe's homoerotic art since it was first exhibited during the height of the AIDS crisis. Students should also consider how the fight for censorship oppresses specific ideologies. Who gets to decide what is too obscene or immoral for the culture at large? How do both artists and art educators have the power to destabilize the dominant culture? Did these artists ultimately benefit from the controversy surrounding their art?

Storr, Robert. "Art, Censorship, and the First Amendment: This Is Not a Test." *Art Journal* 50 (1991): 12-28.

SUMMARY

Robert Storr, curator in the department of painting and sculpture at MoMA, shares his opinion on the culture wars, which he deems "a neoconservative era that has witnessed a steady chipping away at the progressive social and economic programs of preceding decades" (12). He briefly describes the panel organized by him and fellow CAA members, Kellie Jones and Barbara Hoffman, titled "The Thought Police Are Out There" which discussed the pressing First Amendment issues. Storr then proceeds to criticize Hilton Kramer's *New York Times* article, "Is Art Above the Laws of Decency?" He mainly critiques the manner in which Kramer condemns Mapplethorpe's art, labeling it too grotesque to even describe, depriving the audience of adequately understanding the material. He never gives a description of Mapplethorpe's work, professing, "I cannot bring myself to describe these pictures in all their gruesome particularities"

(13). Thus, the public is not able to draw independent conclusions from Kramer's essay since he never explicitly addresses the art. Storr provides an account of the Cincinnati Arts Center trial, where the Contemporary Arts Center and its director Dennis Barrie were ultimately acquitted of obscenity charges. He then concludes that Mapplethorpe's photographs cannot be discussed isolated from their context, and that everyone has the right to decide for themselves whether they want to examine the work, or look in the opposite direction. For this reason, along with Storr's article, *Art Journal* reproduces Mapplethorpe's entire *X Portfolio*.

JUSTIFICATION

Paired with Darts' essay, this reading enhances students' understanding of the Mapplethorpe trial. Students gain insight into the organization of the CAA panel, "The Thought Police Are Out There," which exemplifies one way an institution can take action against perceived injustices. Most importantly, Storr's response to Kramer's article demonstrates to students that this is an ongoing complex dialogue. Evidently, the dispute over Mapplethorpe's work is not so clear-cut, as many intellectuals have chimed into the debate on obscenity, all contributing different perspectives.

POSSIBLE CLASS EXERCISE

Before coming to class I would have students mark-up this reading, circling any persuasive or forceful words and sentences. Thus, students will be prepared to discuss effective writing styles in class. What language does Storr implement when criticizing Kramer? Is his technique effective in illuminating flaws in Kramer's essay? Students should also note Storr's highly self-conscious approach to his writing. For example, he welcomes counter-points and dissenting views from his, as this illustrates that democracy is "in good working order"(12). How is tension at the heart of democracy?

Lerner, Ralph E., and Judith Bresler. “Public Art” In *Art Law: The Guide for Collectors, Investors, Dealers, and Artists* 4th Edition, 858-862. New York: Practising Law Institute, 2012.

SUMMARY

In this section, Lerner and Bresler discuss the many legal conflicts often raised by public art. Such conflicts mainly comprise the artist’s right to freedom of expression opposed to majority rights and desires of the public. Typical grounds for claiming public art unlawful include aesthetic reasons, environmental obligations, or the fact that the work is a public nuisance/ danger. The reading discusses the Serra case as an example of the latter. In this example, artist Richard Serra’s sculpture *Tilted Arc* was commissioned in 1979 by United States General Services Administration to inhabit Foley Plaza in New York City. Soon after its completion, employees in the area petitioned for its removal, declaring the sculpture an “ugly obstruction” (860). However, Serra argued that the piece was site-specific, and therefore, its removal would destroy the artwork. He also asserted that its removal impeded his First Amendment rights. After years of appeals and litigations, in 1989 the court ordered *Tilted Arc*’s dismantling. When weighing Serra’s First Amendment rights against the GSA’s interest in keeping the plaza safe from obstruction, the court viewed the removal of the work as legitimate. Another public art controversy occurred when the Metropolitan Transportation Authority commissioned photographs from artist Jenny Marketou to exhibit in a Queens’ subway station. Numerous New Yorkers were offended when the photographs only depicted white faces, despite the art’s aim to foster multiculturalism. Marketou planned legal action against the state government for violating her First Amendment rights. The case was eventually settled and the display remained, but with a newly added brochure fully explaining the work. Lerner and Bresler conclude the public art section by discussing the many legal complications encountered by artists Christo and Jean-Claude. Because their art exists on such a large-scale, like *Running Fence*

(1976), which stretched across twenty-four miles of California, they often have trouble securing legal permission from both public and private parties. However, the legal problems the artists run into rarely become major political issues since they privately fund all of their artworks.

JUSTIFICATION

This reading adds another dimension to the freedom of expression unit, since public art cases raise different legal and philosophical questions than discussed in the previous essays. Because many public artworks are site-specific, the artist enters into an entirely different contract with the commissioner, who is typically the government. In these cases, due to the government's power, the artist frequently loses any legal disputes. This reading also briefly mentions the Visual Artists Rights Act (VARA) of 1990. The act was implemented only a year after the destruction of Serra's work, and his sculpture probably would have been protected under this law had it been created later. Thus, the chapter introduces students to an important law that they will discuss later in the course. Lastly, public art raises important environmental issues, and considering an artwork's effect on the surrounding space can be instrumental in the decision to destroy it or prohibit its construction.

POSSIBLE CLASS DISCUSSION

Legal issues regarding public art can generate interesting philosophical discussions centering on the concept of ownership. Who has ownership over "public" space? Who has the right to remove public art if it is intended for the community at large? In the Serra case, should property rights trump freedom of expression? Is that what the verdict of this case implies? How is public art potentially a more politically powerful tool than other art forms?

Copyright Law

(Weeks 10 and 11)

Artists constantly seek inspiration for their work, but when does appropriation become infringement? Regarding art, because the legal and ethical boundaries between fair use and infringement are hazy, copyright lawsuits typically result in a somewhat subjective decision. Examining copyright laws closely in this unit will illuminate the ambiguity and constant modification of these laws. Students will recognize how with increasing technology these issues become more prevalent and pressing. Also, because copyright usually offers the creator economic protection, these issues seem to have intensified with capitalism's increasing power. Therefore, studying copyright infringement is important for artists and creators in general to avoid misappropriation or encroachment on another individual's legal rights.

DuBoff, Leonard D., and Christy D. King. “Copyright.” In *Art Law in a Nutshell* 3rd Edition, 158-185. St. Paul, Minnesota: West Group, 2000.

SUMMARY

This chapter examines copyright laws and the many legal issues stemming from the subject. On the most basic level, copyright is “the ownership of any tangible or intangible property,” giving the owner the ability to freely use and enjoy this property (158). Copyright protection largely serves an economic purpose, protecting the creator’s rights to profit financially from their innovation in an effort to encourage creative activity. Historically, congress passed the first copyright law in 1790, and altered it every so often until its major reformation in 1976. The 1976 Act grants the copyright owner five exclusive rights: they may reproduce the work by any means; prepare pieces derived from the copyrighted work; distribute copies for mass sale or transmit ownership by rental, lease, or lending; publicly perform audiovisual works; and they have the right to display individual images of the audiovisual work publicly.

DuBoff and King explain that an “original” work signifies that the piece was produced independent from another work. A work will not be denied copyright protection even if it appears identical to another piece, so long as the defendant can prove they were not aware the other entity existed. For example, “if two artists independently create identical works, each will be entitled to his or her own copyright and neither will infringe the other’s copyright” (165). In order to establish that infringement has occurred, the plaintiff must prove that they are the copyright owner of the work and that the defendant’s application of the work violates the plaintiff’s rights. However, the authors point out the limitations of determining infringement, since obtaining direct evidence that the defendant copied the plaintiff is often difficult. When the defendant proves infringement, remedies may include the eradication of all infringing copies or holding the defendant liable for money damages.

The Fair Use Doctrine establishes that “criticism, comment, news reporting, teaching...scholarship, or research” do not infringe on copyright laws (184). When determining fair use, one must consider the intent and nature of the use, the character of the copyrighted work, whether a substantial portion of the copyrighted material was employed, and the influence of the use on the market for the copyrighted work. Although a judge must reflect on these factors when deciding fair use, there is no hierarchy to these aspects, and other factors may also be used in the decision. Finally, the chapter concludes by discussing the parody defense, since unauthorized use of copyrighted work for the sake of parody falls under fair use.

JUSTIFICATION

Assigning this reading as an introduction to copyright law will benefit students, as it presents a thorough overview of copyright, infringement, and fair use technicalities that adequately sets the stage for cases discussed later in the unit. While the reading details how these laws apply to various aspects of society, it emphasizes connections to the art world. Through this reading students will gain insight into important landmark cases. For example, *Rogers v. Koons* (1992) is discussed as setting an example that artists cannot freely use copyrighted material for their own economic benefit. In this case, renowned artist Jeff Koons appropriated, for a sculpture, a photograph taken and copyrighted by Art Rogers. Rogers filed claims of copyright infringement against Koons, and Koons’ used a parody defense to claim fair use. However, the court rejected this argument, as it claimed Koons’ insufficient transformation of the work failed to constitute it as parody.

The chapter also provides important information on the Berne Convention, allowing students to connect copyright issues to another significant course theme, international relations. In 1989 the U.S. joined the Berne Convention, which grants equal copyright protection to creators of copyrighted works from other signatory countries. Joining the convention created

U.S. treaties like the 1996 General Agreement on Tariffs and Trade (GATT), which protected foreign works in the U.S. public domain from infringement. This reading contextualizes the U.S. and their copyright laws in relation to other nations, which is important for the course as it reinforces that U.S. art law is not separate from the larger world. Finally, the reading tracks alterations in copyright law over time, allowing students to recognize how law is fluid and constantly evolving in response to technological advances and other social changes.

POSSIBLE CLASS DISCUSSION

After completing the reading, students should discuss the ways in which copyright laws can be both progressive and limiting. For example, the right to economically monopolize one's creation fuels creative competition and innovation. Yet, a court ruling against certain art as illegitimate discourages and limits creative appropriation. Clearly, court verdicts are extremely situational, making it difficult to draft laws that can equitably apply to all legal disputes. How does the language of certain legislation regarding copyright and infringement suggest a fluidity and un-rigidity that could be open for interpretation? Is there a way to more effectively discern between appropriation and infringement?

Zuber, Tom, and Jeff Zuber. “*Cariou v. Prince: Court Finds Appropriated but Altered Photos Protected under Fair Use.*” LawUpdates.com, June 9, 2013, accessed March 25, 2014, http://www.lawupdates.com/commentary/icariou_v._prince_i_court_finds_appropriated_but_altered_photos_prote/

Kennedy, Randy. “Apropos Appropriation.” *New York Times*, December 28, 2011, accessed March 25, 2014, <http://www.nytimes.com/2012/01/01/arts/design/richard-prince-lawsuit-focuses-on-limits-of-appropriation.html?pagewanted=all&r=0>

Halperin, Julia. “Prince Versus Cariou Copyright Case Settled.” *The Art Newspaper*, March 18, 2014, accessed March 25, 2014, <http://www.theartnewspaper.com/articles/Prince-versus-Cariou-copyright-case-settled/32076>

SUMMARY

The first article details the lawsuit filed in 2008 by photographer Patrick Cariou against artist Richard Prince for copyright infringement. Prince appropriated photographs from Cariou’s published book *Yes Rasta* (2000), which portrays Jamaican Rastafarians in black-and-white portraits and landscapes. Prince altered 35 of Cariou’s photos for his series *Canal Zone* (2007) and exhibited the series in 2008 at the Gagosian Gallery. After learning of Prince’s exhibition, Cariou sued the artist and gallery for copyright infringement. Although the district court ruled in favor of Cariou, the article describes Prince’s appeal to the Second Circuit, who found that the district court did not appropriately apply the fair use test to Prince’s work. The Second Court ultimately ruled in favor of Prince, stating that all but five works in *Canal Zone* warranted fair use, and sent the case back to the district court to determine fair use for those five photographs.

The *New York Times* article mainly discusses the implications of the first ruling for the art world. Kennedy argues that ruling against Prince based on the lack of transformative value in his work sets an extremely narrow standard for artists who appropriate images. He explains that the tradition of appropriation is essential in much of the art from the last half-century, and was practiced by artists like Picasso. He notes that museums, specifically MoMA and the Met, have come out in support of Prince. Issues of appropriation and copyright are only heightening in this

digital age, a problem Kennedy draws attention to. He illustrates how the art world is addressing these problems much later than industries like music and film, where illegal piracy and sampling has occurred for years. After providing examples of the recent increase in appropriation in the contemporary art world, like Christian Marclay's popular video "The Clock" or Rob Pruitt's show "Patterns and Degradation," Kennedy inquires as to whether a stricter copyright system would work for the increasingly digital art world, or if the problem could simply be addressed through paying more credit where it is due.

Lastly, Halperin's article describes the recent settlement of the six-year legal battle, where the two parties reached a confidential settlement, which includes Cariou withdrawing any rights to the pieces in Prince's *Canal Zone*. Some experts remain uneasy with the outcome. Art lawyer Virginia Rutledge states that a "better result would have been a precedent that affirmed the larger fair use and free speech values at stake." Evidently, the conclusion of the case did not provide an exact standard for when appropriation crosses into misappropriation.

JUSTIFICATION

These articles most effectively portray the *Prince v. Cariou* case in its entirety and the related larger concerns. The first article is important, as it gives comprehensive background information on the initial 2008 court case. Furthermore, the article illustrates why the case was appealed and the issues the Second Circuit had with the district court's initial interpretation of Prince's appropriation. The reading refers to technicalities that were discussed in *Art Law in a Nutshell*, allowing students to see how the fair use test is applied to a specific legal case. With sufficient background knowledge from the Zuber reading, the Kennedy article allows students to see how the case reflects pressing contemporary issues in both the art world and other industries. The article explicitly analyzes how increasing technology and readily available images on the Internet have transformed the art world, and suggests that adaptations to copyright laws must be

made accordingly. This concept underscores a course theme of technology and its relation to art law. The Halperin source supplements the other articles since it brings closure to the case. The final settlement is important to note since it was resolved privately, outside the court of law, demonstrating how the ambiguity and subjectivity of the fair use test makes it nearly impossible to definitively determine whether the appropriation was legal or not. This case example also reinforces how drawn out legal battles can be, sometimes not reaching a resolution until years later.

POSSIBLE CLASS EXERCISE

It would be interesting to hold an informal debate accompanying the Prince-Cariou readings in order to see where the class stands on this issue. Because the dispute is so complex, students should use legal evidence to argue whether they agree with the final outcome of the case. Even though Prince was eventually triumphant, is his art unethical at all? Does Cariou deserve anything for his contribution to Prince's work? Should the judge and witnesses have to be art connoisseurs in order to make a valid decision? Kennedy mentions in his article that one of the pieces from Prince's *Canal Zone* sold for almost \$2.5 million. Since copyright protection is mainly an economic concern, is there a correlation between the increasingly high art market prices and the rise in art copyright lawsuits? Is it a coincidence that the more marketable and economically powerful artist won the case? Would Cariou have taken such intense legal action had Prince's art not been selling well? Kennedy quotes artist Stephen Frailey who claims that this younger generation of artists, "feel that once an image goes into a shared digital space, it's just there for them to change, to elaborate on, to add to, to improve, to do whatever they want with it. They don't see this as a subversive act. They see the Internet as a collaborative community and everything on it as raw material." Do students agree with this statement? As a

society, will our concept of ownership have to change with technological advances and changes in artistic practices?

Robertson, Kirsty. “Embroidery Pirates and Fashion Victims: Textiles, Craft and Copyright.” *Textile* 8 (2010): 86-111.

SUMMARY

This article analyzes the widespread emergence of writings on copyright laws as a concentrated effort to strengthen copyright protection in the online textile and craft community. Robertson argues that the mounting interest in copyright concerning textiles needs to be examined in relation to a growing online marketplace and also as an economic strategy for developed nations. While crafting and textile making was originally based on a community ethos, centered on the sharing of ideas and joint-creation, the new crafting atmosphere, on the contrary, focuses on competition and policing copyrighted designs. Robertson attributes the recent emphasis on this previously marginalized art form to a “new economy” that positions the Global North countries as rulers of a global capitalist market. Intellectual Property Rights and copyright laws “can be seen as giving the Global North advantages that were threatened by the flight of manufacturing South and East” (100). She reveals how xenophobic anxieties towards China’s growing economic dominance in the textile industry directly influences the promotion of buying “locally” U.S. crafted art and textiles on websites like Etsy.com. For example, “copyright is discussed in parallel to scandals over the use of lead paint on children’s toys made in Chinese factories and the discovery of melamine in children’s milk in China- both scandals that received a great deal of coverage on Etsy.com” (102). Websites like Etsy.com epitomize what Robinson refers to as “cultural capitalism,” where discussion threads alert independent crafters about the legal consequences of copyright infringement and piracy, despite much of the lexicon being misrepresented or not supported by case law. However, there has also been backlash in the

crafting community against the strengthening of copyright laws, as crafters view these laws as impeding on the rights of makers. For example, when the Embroidery Software Protection Coalition began sending out cease-and-desist letters to EBay bidders who had allegedly purchased counterfeit embroidery patterns people were outraged. Hostile responses were publically posted on online discussion forums, and many people refused to pay the fines they were charged. Robertson concludes by asserting that the crafting renaissance, which promotes copyright protection and individual economic competition, must be interpreted through rising capitalist agendas and larger global relations in order to create effective change in a currently flawed system.

JUSTIFICATION

This reading enhances the copyright unit since it deals with material typically marginalized within art law discussions. For example, due to centuries of prejudice and artistic hierarchies, textile production, embroidery, and needlework are typically considered “craft,” and not included in discussions of high art. Thus, artisans possess less power in the art world than artists. The reading also explores international power dynamics that are essential to the course through tracking the movement of cheap textile labor east, and in response the prejudice towards nations like China and the promotion of large-scale U.S. textile companies. Power dynamics are further investigated through discussions of gender, an important topic that has not yet been addressed in previous course readings. The art world largely devalues textiles due to their association with being a gendered pastime. Furthermore, Robertson highlights the paradox of many crafters who identify as third-wave feminists, yet obtain materials from exploited workers in developing nations. She encourages readers to ask, “whether protection for Global North crafters selling their wares on sites such as Etsy.com relies fundamentally on the strategic disempowerment of primarily pink-collar workers” (106). Thus, the reading encourages students

to think critically about art production, where issues of domination and coercion are less visible and discussed. Another course theme addressed in the reading is technology's transformative effect on art and law. Evidently, the increase in the online market for both buying and selling arts and crafts has amplified artistic development while also complicating issues of ownership and fair use of copyrighted material.

POSSIBLE CLASS EXERCISE

Many important issues arise in this reading and students should discern and locate the author's main critiques. Most obviously, Robertson is critical of global capitalism and how it fuels harsh economic competition, expansion, and exploitation. How does she relate copyright laws and intellectual property rights to weaknesses in capitalism? How does she illustrate that capitalism is gendered? Where else do identity politics come into play? For example, Robertson links strict copyright laws to economic patriotism. What language does certain copyright infringement warnings use to suggest that piracy is anti-democratic? Does the strict copyright attitude towards textiles in fact damage the traditional approach to craft making as a communal exchange of ideas?

Conservation

(Weeks 12 and 13)

The practice of conservation often raises legal, ethical, and philosophical issues. The goal of conservation is to preserve great works of art for the benefit of future generations. However, what happens when an artist intends for their work to disintegrate? Is an artist's intention more important than the work's cultural preservation? These are just some of the legal questions raised through conservation efforts. The readings provide students with background on the conservation process, along with the legal responsibilities of conservators. After examining the case examples, students should understand the complexities surrounding art conservation, as people vie for control to protect an artwork or site.

Garfinkle, Ann M., Janet Fries, Daniel Lopez, and Laura Possessky. "Art Conservation and the Legal Obligation to Preserve Artistic Intent." *Journal of the American Institute for Conservation* 36 (1997): 165-179.

SUMMARY

This article outlines the fundamental aspects of the 1990 Visual Artists Rights Act (VARA) in relation to its effect on artist-conservator relations. Although VARA is technically a copyright law, the new artist's rights under the doctrine directly impacts art conservators, as it inflicts upon them a legal obligation to preserve artistic intent. Although conservators were previously compelled to uphold artistic intent, there are now greater legal repercussions for those who fail to do so. The reading provides background information on U.S. copyright law, highlighting how the U.S. law historically differentiated from the law of other nations. While U.S. copyright law is based on financial motivations, copyright law in other countries, like France, Italy, and Germany, is grounded in the concept of natural rights which stresses that an artist inherently possesses ownership over their work since it serves as an extension of their being. The natural rights an artist has to his/her work are known as "moral rights," and are the focus of VARA. Despite disagreement over moral rights, The United States adopted them in 1988 by joining the Berne Convention for the Protection of Literary and Artistic Works. The U.S. was internationally pressured into signing the Berne Convention due to the increased piracy of U.S. copyrighted works. Although the U.S. has attempted to detach economic concerns from moral concerns, the two are clearly not easily separable. However, on paper, VARA focuses on the "right of attribution," which grants artists the right to choose whether or not they wish to make known their authorship of the work, and the "right of integrity," which allows artists to prevent damage to their art. Under the law, these rights are only attributable to a "work of visual art," defined mainly as a painting, drawing, print, sculpture, or photographic image "in a limited addition of 200 copies or fewer" (168). The article then discusses VARA in relation to

conservators, stating that under the act they may be held liable for destroying a work intentionally or due to gross negligence. A conservator may also be held accountable under the Lanham Act (1946), which states that if someone “sells goods and services and falsely designates the origin or falsely describes or represents what those goods or services are, that person may be liable to another who believes to have been harmed by such action” (173). Conservators may violate this decree if their action falsely describes or represents the artist, or if they misrepresent the extent of their contribution to the work. In conclusion, the authors provide conservators with advice on how to avoid legal issues. They stress the importance of erring on the side of caution when working, and that constant communication with artist is vital.

JUSTIFICATION

This source extensively describes the impact of VARA on artists and conservators, allowing students to understand the particulars and significance of the doctrine. While VARA seemingly falls under the category of copyright law, the act’s application to conservation cannot be ignored. The relevance VARA has to both copyright and conservation illustrates their interrelation and underscores the important notion that laws are not so clear-cut, often impacting multiple legal areas. From this essay students also gain insight into international legal relations. Although many course texts suggest U.S. global dominance, this reading exemplifies how the U.S. can be pressured into submitting to foreign powers. For example, the U.S. was largely forced into signing the Berne Convention despite some contentions with its laws.

POSSIBLE CLASS EXERCISE

Through class discussion, students should critically examine elements of VARA and determine some limitations of the law. Why has the U.S. has defined VARA so narrowly to a “work of visual art?” According to VARA’s definition of a “work of visual art” is video art legally protected? Is the law in need of modification in order to account for new art forms and

technologies? Is the separation of economic and moral concerns in our hyper-capitalist society possible? How does VARA connect to the art market? For example, if “right of attribution” and “right of integrity” affect an artist’s reputation, would this influence her/his success economically since reputation is vital to the market? The reading also reveals how these “moral rights” become economic in that “they are bargaining chips that potentially give artists additional power in negotiations for projects” (168). How do students suppose this would transpire in the art world?

Hornbeck, Stephanie E. “A Conservation Conundrum: Ephemeral Art at the National Museum of African Art.” *African Arts* (2009): 52- 61.

SUMMARY

Using the permanent collection of the Smithsonian’s National Museum of African Art as an example, this source discusses the technical, ethical, and legal challenges conservators face when dealing with ephemeral art. The author begins by defining ephemeral materials as objects that experience chemical or physical alterations that permanently change the piece. Agents that cause such deterioration include light, temperature, humidity, and oxygen. Many artworks in the Smithsonian’s National Museum of African Art collection are ephemeral by design, as many of the artists believed the ephemeral nature of materials used adds meaning to the work. Ephemeral by design is also characterized by temporal installations, where the artist has chosen that the installation only exist for a specific duration. The artist’s purposeful use of ephemeral materials directly opposes the conservators aim to preserve works of art for the future. Thus, conservators must compromise between the goals of preservation and upholding artistic intent. In order to maintain this balance, the article stresses that conservators must constantly communicate with artists if they have the option. For example, ceramicist Magdalene Odundo uses *terra sigillata*, rich in marl, to manufacture her ceramics. Marl is a clay material highly susceptible to chemical

changes over time. Since the creation of her works, tiny white spots have formed on the oxidation-fired ceramics. Despite conservators having the ability to correct this process known as “lime popping,” Odundo has expressed her desire to leave the art as is, since lime popping is “a minor consequence of her chosen materials and a fabrication technique perfected to yield her desired plasticity and coloration” (54). In this case, conservators effectively communicated with the artist, ultimately not restoring the art due to the artist’s wishes. Documentation and contracts regarding artist-conservator agreements should also be recorded, for both legal and management reasons. The article discusses the specific section of VARA dealing with conservation, section 106A (c)(2), which states, “the modification of a work of visual art which is the result of conservation...of the work is not a destruction, distortion, mutilation, or other modification...unless the modification is caused by gross negligence” (57). Clearly, VARA protects an artist’s work from conservational damage, and a conservator will be held liable if gross negligence is proven. However, overall American copyright law, contrary to European copyright law, favors and maintains the larger public interest to protect cultural property over the right of artists. In cases where an artist includes deterioration as part of the artwork, “VARA states explicitly that the preservation of the cultural property supercedes the individual wishes of the artist” (57). Thus, disputes often arise over whether the conservation of a piece is more important for the culture at large than the artist’s intention for his/her work. In conclusion, the reading illustrates how clear communication and records between artists, conservators, and curators is the best method for preventing conservation legal issues.

JUSTIFICATION

From this reading, students gain insight into specific methods and practices of conservation, knowledge that enhances the legal issues conservators face, since it puts the many challenges of conservation into perspective. Also, the reading brings African art into the

syllabus, adding diversity to the art examined in the course. Students also see how VARA plays out through concrete case study examples. The tensions between artist and conservator goals, and what the law favors, is important to observe how this power struggle plays out in a museum setting. Also essential is how advances in organic chemistry constantly produce new materials available to artists, and consequently, pose new problems for conservators. Also, new media in art, like works incorporating video, audio, film, or computer, have also raised contemporary issues in conservation. Thus, students recognize how laws like VARA must expand in order to adapt to these technological advances. The final sentence of the reading states, “the dialogues surrounding the conservation of ephemeral art are dynamic and continually evolving,” reinforcing the significant idea that laws and conservation practices are not fixed, but are in fact flexible (61).

POSSIBLE CLASS EXERCISE

Students should discuss the main conflicts the reading reveals. Should artistic intent always trump conservation needs? Are future generations robbed of an important work if they are only able to view it in its deteriorated state? Philosophically speaking, does the piece become a different artwork if its materials are restored or replaced? Does it matter that much African art is traditionally meant to deteriorate? How do the conservation laws show America’s values compared to other nations? Consider how the larger public interest and preservation of cultural property guides American copyright law. Should greater cultural interest be protected over artist’s intentions and desires? How should VARA be reworded to incorporate protection of new media?

Minder, Raphael. “Despite Good Intentions, A Fresco In Spain Is Ruined.” *New York Times*, August 23, 2012.

Neild, Barry. “Ecce Homo ‘Restorer’ Wants a Slice of the Royalties.” *The Guardian*, September 20, 2012.

Buckley, Cara. “Night Falls, and 5Pointz, a Graffiti Mecca, Is Whited Out in Queens.” *New York Times*, November 19, 2013.

SUMMARY

The first article describes how Cecilia Giménez, an eighty-year-old Spanish woman, ruined a nineteenth-century Christ fresco by attempting to restore it. A Roman Catholic Church in Borja, Spain, Santuario de la Misericordia, houses the fresco created by artist Elias Garcia Martinez. The fresco was so poorly restored that when authorities saw the newly altered fresco they suspected vandalism. Giménez claimed she did nothing wrong, that she wished to restore the work because it was her favorite, and that the clergy gave her permission to try and salvage the fresco. However, the article concludes by revealing that the Borja authorities are considering taking legal action.

Neild’s article follows up on this case, and interestingly enough, while the authorities never arrested Giménez, now Giménez has filed a lawsuit against the church. She claims that she deserves some economic compensation for the work, as it has become somewhat of a masterpiece in its own right. The church has gained an extreme increase in popularity since the fresco was restored, and has even profited from the piece since visitors who come to view the work pay a four-Euro admission price. Giménez’s lawyer states, “She just wants the church to conform to the law...if this means economic compensation she wants it to be for charitable purposes” (1). While Giménez is now claiming ownership over the new fresco, the original artist’s living family is still threatening legal action against Giménez and wants the fresco properly restored.

The third article details a case surrounding 5Pointz, renowned buildings in Queens, NY, decorated with graffiti art. In 2002 graffiti artist Meres One officially designated the buildings 5Pointz, becoming their curator. The buildings gained immense popularity, becoming an international tourist attraction. Because many people celebrated 5Pointz as a graffiti museum, there was outrage when the buildings were whitewashed in November of 2013, erasing the work of over 1,500 artists. Jerry Wolkoff, the buildings' owner, planned on demolishing 5Pointz in order to build luxury apartments. After a long battle between the buildings' owner and the artists fighting to protect 5Pointz, the City Council permitted Mr. Wolkoff's plan, and a federal judge asserted that he could not prevent its destruction.

JUSTIFICATION

The case of Giménez and her botched restoration exemplifies the complexity and uncertainty of many legal conflicts, an important idea that students should take away from the course. Clearly, laws like VARA cannot easily remedy the case, as the restoration was not an official act of conservation, Giménez is not a professional conservator, and they are in Spain. The conflict raises the question of artistic ownership, and whether the restoration can be considered a new work of art even if that was not Giménez's intention. This conservation case is also very recent, teaching students about contemporary issues in the art world. Similarly, the 5Pointz conflict enhances the course, as it is an extremely contemporary conservation issue. Furthermore, the case highlights graffiti as an unconventional art form still not typically associated with high art. The article directly relates to another course theme, the art market, as it discusses how graffiti has recently become commoditized with the success of street artists like Banksy. Through the two case examples of Giménez's restoration and 5Pointz, students are able to concretely perceive the ambiguity of ethical and legal issues of conservation.

POSSIBLE CLASS DISCUSSION

The two cases raise numerous thought provoking questions. Regarding the first case, students should decide if they think Giménez is in the wrong and should be legally persecuted for her negligence. Considering identity politics, consider whether Giménez's old age plays into how the authorities have reacted to her act of restoration? Would she have been treated more severely had she been in her twenties? Does Giménez have the right to claim ownership over the restored fresco? Does she have the right to make money from this work? In terms of the 5Pointz case, does it show that graffiti has yet to be respected and considered a true art form? The article states, "Mr. Wolkoff said that graffiti was ephemeral, and that there would be plenty of space for artists' work around his new buildings." Was 5Pointz site-specific? Can the same museum be reproduced on a new wall? In the article, 5Pointz is referred to as a "United-Nations of graffiti." What does this say about the international value of art and its ability to bring nations together socio-politically? Based on VARA's aim to maintain the larger public interest to protect cultural property, should 5Pointz have been legally protected?